

**SB2687**



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2014**

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**ON THE FOLLOWING MEASURE:**

**S.B. NO. 2687, RELATING TO LIMITATIONS OF ACTIONS.**

**BEFORE THE:**

**SENATE COMMITTEE ON JUDICIARY AND LABOR**

**DATE:** Friday, February 7, 2014

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Caron Inagaki, Deputy Attorney General

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Chair Hee and Members of the Committee:

The Department of the Attorney General opposes this measure.

The purpose of this bill is to amend section 657-1.8, subsection (b), Hawaii Revised Statutes (HRS), to eliminate the two-year window that allowed civil claims to be brought by victims of childhood sexual assault who had been barred from filing a claim due to the expiration of the applicable statute of limitations. The bill adds language to allow a victim of childhood sexual assault who is barred from filing a claim due to the expiration of the applicable statute of limitations to file a claim any time before the victim attains the age of fifty-five.

When section 657-1.8(b) first passed, the bill was highly publicized and the public was made aware that any victims of childhood sexual assault whose claims may have been untimely due to the applicable statute of limitations at that time, could have two years in which to now bring a civil lawsuit. Indeed, many civil lawsuits alleging acts of sexual assault that occurred many years, sometimes decades, earlier, were filed as a result of the passage of this law. These lawsuits were also highly publicized. We believe that the two-year window was a reasonable period of time and allowed victims a fair opportunity to have a second chance to file a claim.

We oppose the further extension of time that allows a civil lawsuit to be brought any time before the victim reaches the age of fifty-five. The extended length of time raises due process concerns because the bill could severely prejudice the defendants in a lawsuit who may not be just the accused perpetrator but also any entity that may be subject to the law.

With this further extension, a victim could theoretically bring a lawsuit more than four decades after the sexual assault. Over the passage of time, memories fade, witnesses move or

pass away, and documents are lost or destroyed. Most entities have records retention policies that call for the destruction of documents after a certain period of time. This is especially critical when the claim is simply a fabrication. A claimant could conceivably wait to file a lawsuit until the most strategically opportune time to prevent a defendant from defending against the lawsuit. A lawsuit could even be brought against a wrongfully accused individual after his or her death and there would be no opportunity for the accused to establish his or her innocence.

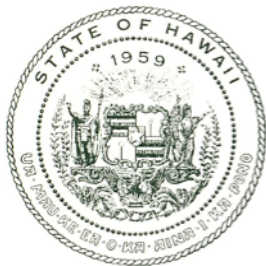
Just one example where this bill could be misapplied is in the instance of a minor who is a victim of sexual abuse of one of the identified crimes and is taken to a hospital to be treated. A medical care provider who examines the minor is mandated to report the suspected abuse. If no medical care provider reports the suspected abuse and the child is abused again, there may be grounds to file an action against the medical care provider and the hospital. However, because a lawsuit may not be filed until decades after the alleged assault, there may no longer be any witnesses or documentation that would allow the medical care provider or hospital to defend itself in the lawsuit.

Furthermore, if medical care providers or hospitals can be sued at any time, insurance companies may refuse to issue errors and omissions policies or may raise their rates to such an extent that physicians could no longer afford to purchase insurance coverage.

Also, any claim against a medical care provider under this bill would be in direct conflict with section 657-7.3, HRS, which sets forth a specific limitation period for actions for medical torts.

We respectfully request that this bill be held.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU  
CARMILLE LIM  
AMY MONK  
LISA ELLEN SMITH  
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February 7, 2014

To: Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

From: Cathy Betts, Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 2687, Relating to Limitation of Actions

Thank you for this opportunity to testify in strong support of SB 2687, which would allow child victims of sexual abuse to bring a civil action if the statute of limitations for bringing a civil claim has lapsed and the victim has not yet reached the age of 55.

It is highly common for survivors to wait years, if not decades, before disclosing their abuse. For child victims of abuse and rape, this legislation is even more important because children rarely disclose, with sometimes a 3-18 year delay in disclosure.<sup>1</sup> This delay in disclosure means that a child victim may miss the statute of limitations and never have the ability to, at the very least, report the sexual assault or abuse. Adult perpetrators recognize and prey on this vulnerability in child victims.

The ability to come forward and report, even if the victim does not “prevail”, can strongly influence the way in which a victim recovers from trauma. Allowing some leniency in the ability to file civil claims allows victims a sense of ownership over the future of their case and potentially, a sense of closure. Further, allowing civil claims to proceed will not open the floodgates nor will it encourage false reporting.

Finally, we ask that this Committee consider amending “gross negligence” to a finding of “negligence”. Considering that the proposed revision to the statute only addresses entities that either already owed a duty of care to the victim or had a degree of responsibility or control over the victim, it seems unnecessary to retain such a specific finding of “gross negligence” in order for a victim to recover damages.

Thank you for this opportunity to testify in support of SB 2687.

<sup>1</sup> Ramona Alagia, *An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health*, 19(1) J.



HAWAII CATHOLIC CONFERENCE  
6301 Pali Highway  
Kaneohe, HI 96744-5224

ONLINE SUBMISSION

Hearing on: Friday, February 7, 2014 @ 10:00 a.m.  
Conference Room #016

**DATE:** February 4, 2014

**TO:** Senate Committee on Judiciary & Labor  
Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair

**FROM:** James Mee, Esq.

**RE: OPPOSITION TO SB 2687 RELATING TO LIMITATION OF ACTIONS**

Honorable Members of the Senate Committee on Judiciary and Labor, I am James Mee, representing the **Hawaii Catholic Conference**. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents the Catholic Church in Hawaii. **We oppose this bill for the following reasons:**

This bill seeks to extend further the statute of limitations for child sexual abuse that would constitute offenses under Part V (Sexual Offenses) and Part VI (Child Abuse) of Chapter 707, by removing the limitations period for potential plaintiffs up to the age of 55. If it becomes law, it could cause substantial problems for all types of programs and nonprofits, including schools, churches, camps, and youth programs.

Many such institutions, including private elementary and secondary schools, Boy Scouts, Girl Scouts, YMCA, YWCA, Boys' and Girls' Clubs, childcare programs, preschools, after school programs, camps, churches, and youth-at-risk programs, will be substantially affected by the revival of claims already barred by the statute of limitations. **Because of the lapse of time, many institutions potentially subject to suit under this bill no longer have the ability to meaningfully defend themselves from such claims.**

The reason for statutes of limitation is to reflect the fact that, over time, individual memories fade, witnesses who may prove or disprove a claim have died or are no longer available, and written records may no longer be available that would have relevance to the case. Especially in the case of nonprofits, record-keeping over a prolonged period may be far from ideal. Boards and staff change, and institutional memories are lost.

This bill, however, would now allow the assertion of claims for up to fifty-five years. In other words, it could conceivably cover claims dating back to 1959, the year Hawaii first became a State. Many institutions may be put in the situation of defending themselves in situations where not only is there a lack of evidence, but the abuser and anyone who may have been at fault for negligently overseeing or

supervising the abuser are long gone. All that remains as a target for litigation may be the institution, which is now without any practical way to defend itself from the allegations.

After the passage of fifty or more years, it is unlikely that the institution will be able to find persons with knowledge as to what actually occurred. Even if there were such persons still alive, it is unlikely they will still have an accurate memory of what occurred that long ago. So the institution is left with the claims of abuse, and absolutely no way to defend itself from such claims. It is fundamentally unfair to put an institution in such a position.

This bill would have substantial negative impacts on the ability of nonprofits to remain open and provide services. Many nonprofits that provide services for children and families do so on very thin budgets, especially in these economically challenging times. The cost of defending against a single claim brought under this bill could have a devastating impact. Further, to the extent that such claims can be insured against, it would seem that premiums for such insurance could increase substantially if this bill became law. Again, many nonprofit organizations may not be able to pay for such insurance, and it is quite possible that such organizations would simply cease to provide services rather than the organization, as well as its directors and officers, being exposed to suit.

This bill also perpetuates the basic unfairness of allowing resuscitated abuse claims against private institutions while immunizing the State and its political subdivisions from the exact same culpable conduct. While people often single out the Catholic Church for past instances of abuse, the problem is by no means unique to the Church. There is always the potential for abuse in any institution that deals with, supervises or cares for children.

Studies indicate that the institutions most likely to foster an atmosphere of abuse are not private institutions, but public ones. As indicated by a study prepared for the federal Department of Education, 6.7% of students in public schools nationwide have reported being sexually abused by an educator, a much higher percentage than the reported incidence of clergy abuse of children. (U.S. Department of Education, "Educator Sexual Misconduct: A Synthesis of Existing Literature" (2004).) Government reports also indicate that, across the country, there has been a high incidence of sexual abuse in juvenile detention facilities, with 10.3% of incarcerated youth reporting they had been sexually abused by a facility staff member during the prior year. (U.S. Department Justice, Bureau of Justice Statistics, "Sexual Victimization in Juvenile Facilities Reported by Youth 2008-09" (2010).)

These rates of abuse in public institutions are much higher than those reported in the private sector, including incidents of abuse involving clergy of the Catholic Church. Yet this bill only allows assertions of claims against private institutions and immunizes the State and its political subdivisions from any responsibility for the exact same abuses. Where is the fairness here, either for victims of abuse, or for private institutions that are faced with having to defend themselves while knowing the State and its political subdivisions are absolved from any accountability for the exact same types of claims?

Finally, this bill will not provide any additional protection for children. While not belittling in any way the suffering that those already abused have suffered, as we have previously testified we believe that the focus of efforts at preventing sexual abuse should be on prevention. Over the past few years, as

this problem has come to light, churches, schools and other nonprofits have taken substantial steps to reduce the possibility for abuse to occur, including substantially increased screening and background checks on potential teachers and employees, accountability and reporting procedures, and supervisory procedures to ensure that children are not put in situations and environments where they could be abused. This bill, however, which resuscitates claims that are 30, 40, or 50 years old, will not do anything to make children safer today.

For these reasons, we believe this bill should be held in committee.

Thank you for the opportunity to testify.



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

*Executive Director*  
Adriana Ramelli

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Linda Jameson

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

Joshua A. Wisch

DATE: February 7, 2014

TO: The Honorable Clayton Hee, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

FROM: Alana Peacott-Ricardos, Policy Research Associate  
The Sex Abuse Treatment Center

RE: S.B. 2687  
Relating to Limitation of Actions

Good morning Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC strongly supports S.B. 2687, which allows a survivor of child sexual abuse to bring a civil action against the abuser or an entity, if the statute of limitations for filing a civil claim has lapsed and the survivor has not yet attained the age of fifty-five. Eliminating the statute of limitations on sexual assault sends a strong message that sexual violence will not be tolerated in our community at any time.

It is common for survivors of sexual assault to wait some time before telling anyone about the assault. Some survivors may never tell. A sexual assault is an unexpected intrusion and can create upheaval at home, work, or in social settings. There are many ways that survivors respond to sexual violence: fear, guilt, shock, disbelief, anger, confusion, helplessness, anxiety. Reporting an assault takes tremendous courage and it may not take first priority following an assault. A survivor may need time to work through the many emotions and experiences before they are ready to engage with the legal system.

This is especially true for survivors of child sexual abuse. Many children do not disclose sexual abuse right away. Some studies have estimated that between 60–80% of child survivors withhold disclosure.<sup>i</sup> Studies examining latency to disclosure have reported a mean delay from 3–18 years.<sup>ii</sup> There may be many reasons for this, from the child's stage of cognitive development and their ability to express what happened, to the fact that a majority of survivors know the perpetrator<sup>iii</sup> and may fear the impact on their family or the perpetrator's family.

Eliminating the statute of limitations can encourage more survivors to come forward and hold more perpetrators accountable. Statutes of limitation assure both the perpetrator and survivor that the perpetrator will not be liable for any harm after a certain point. No matter what the perpetrator has done or how deep of an impact the perpetrator has had on the survivor, the perpetrator can be guaranteed to walk away



without consequence. Thus, there is much less incentive to come forward and reveal such a personal experience. By knowing that there is a possibility that the perpetrator may be held responsible for their actions, more survivors may be motivated to share their story when they are ready. Additionally, this enhances public safety. Studies have found that a number of undetected sex offenders are serial offenders.<sup>iv</sup> These offenders pose a continuing threat to the community. When more survivors are able to come forward, more perpetrators are identified.

In 2012, Hawai'i amended its statute of limitations for civil actions involving child sexual abuse and provided a two-year window allowing survivors who had been previously barred by the statute of limitations to bring a civil action against the perpetrator or against the entity that employed the person accused of committing the abuse. This window will close this April. To date, at least ten survivors have come forward with suits directly attributable to the law. While the law has provided survivors with a chance to obtain justice, it has also served to expose the long-hidden abusers and institutions who failed to protect children from abuse.

We urge you to pass S.B. 2687. The benefit to our communities in eliminating the civil statute of limitations far outweighs any arguments for keeping it. Eliminating the statute of limitations does not change the burden of proof or difficulty that both sides face in terms of evidence where there has been a passage of time. It merely improves survivors' access to justice by allowing them the opportunity to move forward in the legal system.

Thank you for this opportunity to testify.

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<sup>i</sup> Ramona Alagia, *An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health*, 19(1) J. CAN. ACAD. CHILD ADOLESC. PSYCHIATRY 32 (Feb. 2010).

<sup>ii</sup> *Id.*

<sup>iii</sup> See, e.g., THE SEX ABUSE TREATMENT CENTER, SEXUAL ASSAULT VICTIMS IN THE CITY AND COUNTY OF HONOLULU: 2001-2010 STATISTICAL PROFILE 1 (2013), available at <http://satchawaii.org/pdf/sexual-assault-victims-2001-2010-statistical-report.pdf>. According to the report, 92.5% of child victims and 80% of adult victims receiving services from SATC knew the perpetrator.

<sup>iv</sup> See, e.g., David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 Violence & Victims 73 (2002).



92-954 Makakilo Dr. #71 Kapolei, HI 96707 Email: [Rainbowfamily808@gmail.com](mailto:Rainbowfamily808@gmail.com) Phone: 808-779-9078 Fax: 808672-6347

February 6, 2014

RE: - SB2687 **Limitations of Actions**

**In Strong Support**

TO: Senate Chair, Vice Chair and members of the Senate Judiciary Committee

Aloha Senators,

Rainbow Family 808 strongly supports SB2687 for the benefit of all children and families in Hawaii. SB2687 will simply give the survivors and victims of sexual abuse their day in court.

As a social worker and community concerned citizen since 1981, I have seen the harm of that the Statute of Limitations does to the victims of the rape of the children who are not capable of understanding that they have a right to a safe environment until years and decades after their rape.

Please give the children a chance for justice, a chance for their day in court. Children need the time to face the harm done to them. The families need the education that no one, no matter what high position, no matter what place of honor that they hold has a right to rob their children from their sense of innocent or their sense of safety.

Please focus on the needs of the children families and pass SB2687 on Limitation of Actions for the benefit of all our children and their families..

Thank you,

Carolyn Martinez Golojuch, MSW

President – Rainbow Family 808.com

# CARDOZO LAW

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February 5, 2014

## VIA DROPBOX/EMAIL SUBMISSION

Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor  
State Capitol, Conference Room 016  
415 South Beretania Street  
Honolulu, HI  
Hearing: Feb. 7, 2014 10AM

RE: Hawaii S.B. 2687 (Allows a victim of child sexual abuse to bring a civil action against victim's abuser or an entity, except for the State or counties, when the entity was grossly negligent, if the statute of limitations for filing a civil claim has lapsed and the victim has not yet attained the age of fifty-five)[Effective 4/23/2014].

Dear Senator Hee, Senator Shimabukuro & Members of the Committee:

I commend the Committee for taking up S.B. 2687, which would extend the statute of limitations for civil actions brought by minor victims of sexual offenses until they are age fifty-five (55). Statute of limitations reform is the one tried and true means that will identify the many hidden child predators who are grooming children in Hawaii right now. Age fifty-five (55) is a reasonable cut-off given that on average, victims come forward in their early 40s. If passed, S.B. 2687 will dramatically improve justice for children who were sexually abused in Hawaii. Further, I support the amendment to remove "gross negligence" from the bill text. Gross negligence is an unnecessary requirement.<sup>1</sup>

**This bill is a sunshine law for children.** There is an epidemic of child sex abuse around the world. At least one in four girls is sexually abused and about one in five boys. Historically, 90% of child victims never go to the authorities and the vast majority of claims expire before the victims are

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<sup>1</sup> Delaware was first window requiring gross negligence, peculiar to Delaware law of sovereign immunity. See DEL. CODE ANN. 10 § 8145 (a)-(b); Neither California nor Minnesota window included it. See CAL. CODE CIV. PROC. § 340.1 (c), Minnesota Child Victims Act, 2012 Minn. Stat. § 541.073 (formerly, S.B. 534 & H.B. 681) (Minn. 2013).

capable of getting to court. Most victims are abused by family or family acquaintances. This bill would protect the children of Hawaii by making it possible for victims to come forward and identify their perpetrators in a court of law. Given that most child perpetrators abuse many children over the course of their lives,<sup>2</sup> SOL extension does far more than create justice for today's victims. It also forestalls future abuse of tomorrow's children by identifying perpetrators to the public.

By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. My recent book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), makes the case for statute of limitations reform in the child sex abuse arena. I am the leading expert on the history and constitutionality of retroactive statutes of limitations with respect to child sex abuse and have advised many child sex abuse victims on constitutional issues, and testified in numerous states where SOL reform is being considered. I also track the SOL movement in all 50 states on my website, [www.sol-reform.com](http://www.sol-reform.com).

**There are three compelling public purposes served by the removal of SOLs for child sexual abuse:**

- (1) It identifies previously unknown child predators to the public so children will not be abused in the future;
- (2) It gives child sex abuse survivors a fair chance at justice; and
- (3) It cures the injustice wreaked by the current unfairly short statute of limitations that protect child predators and silence child sex abuse victims.

I have been involved in statute of limitations reform in numerous states. This is the only tried and true method of identifying the many hidden child predators. As Professor Timothy Lytton has documented, civil tort claims have been the only means by which survivors of clergy abuse have been able to obtain any justice. Timothy Lytton, *Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Sexual Abuse* (Harvard University Press, 2008).

This is a vibrant national movement to protect our children. Legislative reform for statutes of limitations for child sex abuse victims is on the rise. Criminal SOL elimination has become the norm, with Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming and the Territory of Guam having already eliminated their criminal SOL for at least some child sex crimes.<sup>3</sup> Although the

<sup>2</sup> KENNETH V. LANNING, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS* 10, 52 (5<sup>th</sup> ed. 2010) available at [http://www.cybertipline.com/en\\_US/publications/NC70.pdf](http://www.cybertipline.com/en_US/publications/NC70.pdf). (“Except for child prostitution, most sexual-exploitation-of-children cases in the United States involve acquaintance molesters who rarely use physical force on their victims. . . . Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the primary acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”)

<sup>3</sup> ALA. CODE § 15-3-1; ALASKA STAT. § 12.10.010, ALASKA STAT. § 11.41.427; ARIZ. REV. STAT. ANN. § 13-107; COLO. REV. STAT. § 16-5-401; CONN. GEN. STAT. § 54-193(a); DEL. CODE ANN. tit. 11 § 205(e); FLA. STAT. ANN. §

2014 legislative session has just begun, 2013 made more progress in opening up abuse victims' access to justice in 2013 than at any point in history. Sixteen states introduced bills to increase victims' access to justice by scaling back the SOLs.<sup>4</sup> In 2013 alone, SOL reform was enacted in Arkansas, where the state eliminated the criminal SOL;<sup>5</sup> Illinois, where the civil and criminal SOLs were eliminated;<sup>6</sup> Vermont, where the SOL was increased for certain sex crimes against children;<sup>7</sup> Nevada, where the criminal statute of limitations was extended;<sup>8</sup> and Minnesota, which removed its SOL for child sexual abuse and enacted a 3-year retroactive civil "window."<sup>9</sup>

Bills were introduced for at least the second time in Pennsylvania (window; civil and criminal elimination);<sup>10</sup> New Jersey (window and extension of discovery rule);<sup>11</sup> and Massachusetts (civil extension to age 55 with a window).<sup>12</sup> They were also introduced in New York (window; civil and criminal elimination);<sup>13</sup> Missouri (elimination of civil and criminal);<sup>14</sup> Oregon (elimination criminal for certain sex crimes against minors);<sup>15</sup> Washington (extension of criminal to 30);<sup>16</sup> and Wisconsin (elimination of civil with a window).<sup>17</sup>

On the civil side 2013 was a continuation of the progress made in previous years; Guam's bill removing the statute of limitations, and creating a two-year "window" was signed into law by Governor Calvo on March 10, 2011.<sup>18</sup> Delaware eliminated both the civil and criminal SOLs and enacted a two-year window, from July 2007 to 2009.<sup>19</sup>

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775.15(13); GA. CODE ANN. §17-3-1(d); IDAHO CODE §19-401; IND. CODE § 35-41-4-2; KY. REV. STAT. ANN. § 500.050; LA. CODE CRIM. PROC. ANN. ART. 571; ME. REV. STAT. ANN. tit. 17-A § 8; *Clark v. State*, 774 A.2d 1136, 1144 n.8 (Md. 2001); MASS. GEN. LAWS CH. 277, § 63; MICH. COMP. LAWS § 767.24(1); MINN. STAT. § 628.26(e)-(f); MISS. CODE ANN. § 15-1-49; MO REV. STAT. § 556.036(1); NEB. REV. ST. § 29-110; N.M. STAT. ANN. § 30-1-8; N.Y. CRIM. PROC. LAW § 30.10(2); *State v. Johnson*, 167 S.E.2d 274, 279 (N.C. 1969) ("In this State no statute of limitations bars the prosecution of a felony"); R.I. GEN. LAWS § 12-12-17(a); S.C. Judicial Dep't, *Summary Court Judges Bench Book*, CRIMINAL(A)(2) (2000-2013) ("South Carolina does not have a general statute of limitations for criminal actions"), <http://www.judicial.state.sc.us/summaryCourtBenchBook/HTML/CriminalA.htm>; S.D. CODIFIED LAWS § 23A-42-1; TEX. CODE CRIM. PROC. ANN., art. 12.01; UTAH CODE ANN. § 76-1-301; VT. STAT. ANN. tit. 13, § 4501; *Comm. v. Gouge*, 1983 WL 210243, at \*1 (Va. Cir. Ct. Feb. 24, 1983) (noting "the crime charged was a felony for which there was no statute of limitations"); W. VA. CODE § 61-11-9 (felonies other than perjury not mentioned in enumerated list); WIS. STAT. ANN. § 939.74; *Boggs v. State*, 484 P.2d 711, 714 (Wyo. 1971) ("Wyoming has no statute of limitations as to the commencement of criminal proceedings"); GUAM P.L. 31-06 & 31-07.

<sup>4</sup> Marci A. Hamilton, 2013: *The Year in Review for Child Sex Abuse Victims' Access to Justice*, JUSTIA (Jan. 9, 2014), <http://verdict.justia.com/2014/01/09/2013-year-review-child-sex-abuse-victims-access-justice>

<sup>5</sup> S.B. 92, 2013 Gen. Assemb., 89th Gen. Assem. (Ark. 2013) (enacted 2013).

<sup>6</sup> H.B. 1063, 98th Gen. Assemb., Reg. Sess. (Ill. 2013); S.B. 1399, 98th Gen. Assemb., Reg. Sess. (Ill. 2013).

<sup>7</sup> S.B. 20, 2013, Gen. Assemb., Reg. Sess. (Vt. 2013) (enacted 2013).

<sup>8</sup> S.B. 103, 2013 Gen. Assemb., Reg. Sess. (Nev. 2013) (enacted 2013).

<sup>9</sup> Minnesota Child Victims Act, 2012 Minn. Stat. § 541.073 (formerly, S.B. 534 & H.B. 681) (Minn. 2013).

<sup>10</sup> H.B. 237, 2013 Gen. Assemb., Reg. Sess. (Pa. 2013); H.B. 238, 2013 Gen. Assemb., Reg. Sess. (Pa. 2013).

<sup>11</sup> S.B. 2281, 215th Leg., 1st Ann. Sess. (N.J. 2012).

<sup>12</sup> H.B. 1455, 188th Gen. Ct., Reg. Sess. (Mass. 2013); S.B. 633, 188th Gen. Ct., Reg. Sess. (Mass. 2013).

<sup>13</sup> Assemb. A01771, 2013 Gen. Assemb., Reg. Sess. (N.Y. 2013).

<sup>14</sup> H.B. 247, 2013 Gen. Assemb., 1st Reg. Sess. (Mo. 2013).

<sup>15</sup> H.B. 3284, 77th Leg. Assemb., Reg. Sess. (Or. 2013).

<sup>16</sup> S.B. 5100, 63rd Leg., Reg. Sess. (Wash. 2013).

<sup>17</sup> S.B. 225, 101st Leg., Reg. Sess. (Wis. 2013).

<sup>18</sup> Bills No. B033 & B034-31(COR), Acts To Amend § 11306 Of Article 3, Chapter 11, Title 7 Of The Guam Code Annotated; Relative To The Statute Of Limitations For Civil Actions Involving Child Sexual Abuse, removing the statute of limitations and establishing a two-year window of opportunity for child sex abuse victims whose claims have expired under the Guam statute of limitations to bring their civil claims, now Public Laws No. 31-06 & 31-07 (2011); Erin

Virginia<sup>20</sup> also enacted legislation extending its civil statutes of limitations in 2011, while Florida eliminated the civil statute of limitations for sexual battery of a child in 2010.<sup>21</sup> Minnesota, Illinois, Florida, Guam and Delaware thus join Alaska,<sup>22</sup> Connecticut<sup>23</sup> and Maine,<sup>24</sup> all of which have eliminated their civil statutes of limitations for child sex crimes. These eliminations have not resulted in miscarriages of justice or any other imagined problems. The only constituencies benefitted by a civil SOL are pedophiles and the institutions whose polices are inadequate to protect.

Opponents argue that Hawaii extending its SOL and enacted a 2-year civil “window,” which went into effect in April 2012 is sufficient.<sup>25</sup> The movement, however, is progressing so much that many states are adding to previous choices to extend the statute of limitations. For example, in 2007, Delaware had enacted its Child Victims Act (CVA), which (1) eliminated the SOL for civil child-sex-abuse cases, and (2) created a two-year window during which civil child-sex-abuse cases on which the SOL had already expired could still be brought in court.<sup>26</sup> The cases that were brought during that SOL window are now moving through the Delaware courts. The CVA did not cover health care providers, as it turned out, and so Delaware enacted this new window for health care providers.<sup>27</sup> Further, Illinois had extended its SOL less than a decade prior to opting for full elimination last year. California had a civil window open for the calendar year of 2003, yet is already seriously considering further SOL extensions.

Already, in 2014, Sen. Jim Beall has introduced bills which would extend the civil and criminal SOL in California,<sup>28</sup> and Assemblywoman Markey has reintroduced her bill to eliminate the SOL and

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Thompson, *Sex Abuse Bills Now Public Law*, PACIFIC DAILY NEWS (Mar. 10, 2011), available at <http://www.guampdn.com/article/20110310/NEWS01/103100301/Sex-abuse-bills-now-public-law>.

<sup>19</sup> DEL. CODE ANN. 10 § 8145 (a)-(b) (2007) (civil); 11 DEL. CODE ANN. 11 § 205 (criminal).

<sup>20</sup> VA. CODE ANN. § 8.01-243(D) (2011), formerly H.B. 1476, 2011 Gen. Assemb., 2011 Reg. Sess., (enacted) (extending the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues).

<sup>21</sup> FLA. STAT. ANN. § 95.11(9) (2010) (enacted) (eliminating statute of limitations for sexual battery if victim was under 16 years old, for claims not barred as of July 2010).

<sup>22</sup> ALASKA STAT. § 09.10.065 (no SOL for claims arising out of for felony sex abuse/assault of minor, felony exploitation of minor).

<sup>23</sup> CONN. GEN. STAT. § 52-577e (no SOL if events forming the civil claim led to conviction for first-degree aggravated sexual or sexual assault).

<sup>24</sup> ME. REV. STAT. ANN. tit. 14, § 752-C (1) (no SOL for any actions based on sex acts against minors).

<sup>25</sup> Hawaii Act 068 (12), formerly S.B. 2588, 2012 Leg. Sess. (Haw. 2012) (enacted April 24, 2012) (extended and tolls statute of limitations for civil actions brought by minor victims of sexual offenses; and reviving via a civil “window” for two (2) years some actions for which the statute of limitations had previously lapsed).

<sup>26</sup> DEL. CODE ANN. 10 § 8145 (a)-(b)

<sup>27</sup> Marci A. Hamilton, *The Progress We've Made -- and Haven't Yet Made -- on Child-Sex-Abuse Statutes of Limitations: 2010, the Year in Review*, FINDLAW (Dec. 30, 2010), <http://writ.news.findlaw.com/hamilton/20101230.html>

<sup>28</sup> California Senate Bill 926 and Senate Bill 924, 2013- 2014 Reg. Sess. (Ca. 2014), available at, <http://sol-reform.com/News/california/#pending>. See also, “Senator Beall Calls for Giving Victims More Time to Seek Prosecution or File a Lawsuit,” Website of Sen. Jim Beall (D-CA15) (Jan. 29, 2014), <http://sd15.senate.ca.gov/news/2014-01-29-senator-beall-calls-giving-victims-more-time-seek-prosecution-or-file-lawsuit> (“Senate Bill 926 would reform the criminal statute of limitations by raising the age at which an adult survivor of childhood sex abuse can seek prosecution from 28 to 40 years. The bill would affect sex crimes against children including lewd and lascivious acts, continuous sexual abuse of a

create a 1 year civil “window” in New York.<sup>29</sup> Iowa is also considering a bill which would extend the statute of limitations for civil and criminal actions brought by minor victims of sexual offenses to twenty-five (25) years from majority.<sup>30</sup>

SOL reform has very few detractors other than the Roman Catholic bishops, who have misleadingly argued that reform is unconstitutional on the theory that it “targets” the Church. SOL reform does not target any particular perpetrator or organization. Indeed, the majority of victims are victims of incest. A federal trial court in the Ninth Circuit persuasively upheld the first California window against such an argument. See Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc), slip op. (S.D. Cal. Dec. 20, 2005).

Child sex abuse victims suffer from many negative effects.<sup>31</sup> Researchers in various studies have found -- specifically in men who were sexually abused as children-- that long-term adaptation will often include sexual problems, dysfunctions or compulsions, confusion and struggles over gender and sexual identity, homophobia and confusion about sexual orientation, problems with intimacy, shame, guilt and self-blame, low self-esteem and negative self images and increased anger. There is also an increased rate of substance abuse, a tendency to deny and de-legitimize the traumatic experience, symptoms of Post Traumatic Stress Disorder, and increased probability of fear and depression.

Hundreds of research studies have shown conclusively that sexual abuse can alter a child’s physical, emotional, cognitive and social development and impact their physical and mental health throughout his or her lifetime. A 2002 study looked at same sex twin pairs where one of the twins was sexually abused as a child and one was not.<sup>32</sup> According to the study, a person with a history of childhood sexual abuse has an increased risk of the following: major depression, suicide attempt, conduct disorders, alcohol and/or nicotine dependence, social anxiety, rape after the age of 18 years old, and, divorce.<sup>33</sup>

Typically, it takes years for the victim to suffer these negative outcomes:

Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place.

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child, and other offenses. The bill has co-authors from both parties. A second bill, SB 924, proposes to reform the two standards that now govern the statute of limitations for civil lawsuits by:

- Increasing the age deadline to file to 40 years old from 26. This existing deadline is currently used when the victim makes his or her causal connection to their trauma before they reach their 26th birthday.
- Increasing the time from the date of discovery of their trauma to child sex abuse to five years from the current standard of three years. Additionally, it stipulates the five-year period starts when a physician, psychologist, or clinical psychologist first informs the victim of the link between their adult psychological injuries and the abuse”).

<sup>29</sup> New York Child Victims Act, Assemb. A01771, 2014 Gen. Assemb., Reg. Sess. (N.Y. 2014), *available at* <http://sol-reform.com/News/new-york/#pending> .

<sup>30</sup> Iowa Child Victims Act, S.B. 3112, 2014 Gen. Assemb., Reg. Sess. (I.A. 2014), *available at* <http://sol-reform.com/news/Iowa#pending> .

<sup>31</sup> Elliot Nelson et. al., Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study, 59(2) ARCHIVES OF GENERAL PSYCHIATRY, 139, 139-45 (2002).

<sup>32</sup> Id. at 139-44.

<sup>33</sup> Id. at 142.

Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later. . . .<sup>34</sup>

Hawaii pays the price of abuse in several ways. First, the state suffers from reduced productivity from victims, because they have been disabled by the abuse. To the extent that they are not made whole, they are producing less tax-generating income. The fact that Hawaii shuts off prosecution and civil claims before victims are ready to come forward means that many victims have no chance to achieve justice and, therefore, are more likely to suffer serious depression and illness. Second, Hawaii bears the cost of divorces, broken homes, and suffering children, which are a sadly prevalent fact in many survivors' lives. This creates a drag on local school districts that must provide counseling and guidance for troubled youth, the state agencies that deal with troubled families, and local authorities. Third, the survivors' medical bills generated by the abuse, whether psychological or physical, are likely to have to be subsidized by state and federal medical programs and funds.

Once again, I applaud you and the Committee for considering this legislation which will help childhood sexual abuse victims. Hawaii's children deserve the passage of statute of limitations reform to protect children today and in the future, and to achieve justice for the many victims suffering in silence. S.B. 2687 represents a huge step forward for Hawaii's children.

Please do not hesitate to contact me if you have questions regarding statute of limitations reform, or if I can be of assistance in any other way.

Sincerely,



Marci A. Hamilton  
Paul R. Verkuil Chair in Public Law  
Benjamin N. Cardozo School of Law

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<sup>34</sup> Mic Hunter, Psy.D., Abused Boys, 59 (1991).



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Subject: Submitted testimony for SB2687 on Feb 7, 2014 10:00AM  
Date: Tuesday, February 04, 2014 12:56:38 PM

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**SB2687**

Submitted on: 2/4/2014

Testimony for JDL on Feb 7, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments: Good Morning Senators and thank you for this opportunity to provide testimony IN STRONG SUPPORT of SB 2687. As a Domestic Violence Survivor Advocate I have the misfortune of hearing gut-wrenching accounts of violence and abuse from those who were victimized by people they once trusted, respected, looked up to and loved. The acts and violations are hard enough to hear but worse for the victim-survivors to bear are the memories of betrayal, their years of suffering in silence and the regret of not pursuing justice when they had the chance. One of the main concerns I hear from these survivors is concern for other potential victims; the survivors worry and wonder if their abusers did the same to others as they did to them and carry an added burden of guilt for not coming forward sooner. By the time these victim-survivors have found the strength and courage to step forward often after YEARS, hearing that the statute of limitations is up drives another stake through their already broken hearts - their quest for justice is over before it even has the chance to start. Crimes are crimes - the passage of time is irrelevant once they've been committed. Are war criminals excused because what they did occurred in Nazi Germany in a different era? Are murderers given a pass once discovered because their crime happened decades ago? Sexual abuse is no less of a crime then murder is - it's a physically-based crime that ends up killing the spirit of an innocent victim - but perhaps it's even worse: at least in death the victim rests in peace, but for those who survive sexual abuse the suffering, anguish and torment can go on for years without end. Applying a Statute of Limitations does NOT make the problem go away - it only turns away those seeking justice and protects the perpetrators' crimes. Senators, please help to correct this error by carrying this measure into law. Allow justice to be on the victim-survivor's timetable NOT on the perpetrator's clock. Thank you again for this opportunity to provide testimony.

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**Subject:** Submitted testimony for SB2687 on Feb 7, 2014 10:00AM  
**Date:** Wednesday, February 05, 2014 2:36:41 PM

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**SB2687**

Submitted on: 2/5/2014

Testimony for JDL on Feb 7, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
chris johnson	Individual	Support	No

Comments: Dear Chair Senator Hee, Vice Chair, Senator Shimabukuro and Committee Members: My name is Christine Johnson. I am a former Registered Nurse and 30 year Activist for child and adult sexual assault victims, Statute of Limitations reform and other human rights violatons. I support this bill and most bills that purpose to remove Statute of Limitations on child and adult sexual assault. Statute of limitations favor rapists. Some, like catholic priests, with the support of their leaders and church have made a game out of running out the SOL on child rape causing even more trauma to victims and families. In fact today, the UNITED NATIONS special committee on child rape/sexual assault and torture etc. produced a SCATHING report against the Vatican/catholic church for heinous child sex crimes and cover up.. This Bill, SB2687 is timely..and spot on.. Am thankful for Senator Maile and Senator Suzie for their attention to SOL reform and their awareness.. Respectfully, Christine Johnson Makaha 96792 phone 373-0739

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**Subject:** \*Submitted testimony for SB2687 on Feb 7, 2014 10:00AM\*  
**Date:** Wednesday, February 05, 2014 9:19:42 PM

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**SB2687**

Submitted on: 2/5/2014

Testimony for JDL on Feb 7, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nakoa Nelson	Individual	Support	No

Comments:

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